

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CARL DUNCAN, JR., et al.

*

Plaintiffs

*

v.

*

Civil Action No. WMN-03-380

GULF STREAM COACH, INC.

*

Defendant

*

DEFENDANT'S MOTION TO DISMISS OR TO TRANSFER

Now comes the Defendant, Gulf Stream Coach, Inc. ("Gulf Stream"), by its attorney, J. Thomas Caskey, and pursuant to Rule 12(b)(3) of the Federal Rules of the Civil Procedure, moves this Court for an order dismissing Plaintiff's Complaint against Gulf Stream, or, in the alternative, transferring this matter, pursuant to 28 U.S.C. § 1404(a). In support of this motion, Gulf Stream states as follows:

1. On or about May 6, 2000, Plaintiffs purchased a 1999 Gulf Stream Tourmaster Recreation Vehicle, model 8430TM from Bernard Chevrolet in Libertyville, Illinois. See Plaintiffs' Complaint, ¶ 3, attached hereto as Exhibit 1.

2. At the time of the purchase of the motor home, Plaintiffs entered into a limited warranty agreement with Gulf Stream. A true and accurate copy of that limited warranty is attached (as Exhibit A) to the Affidavit of Anthony Suddon, which is attached hereto as Exhibit 2. A subsequent owner warranty registration was also issued. A true and

accurate copy of that warranty registration is attached as Exhibit B to the Suddon Affidavit.

The limited warranty agreement contains a forum selection clause that provides as follows:

6. Jurisdiction and Applicable Law.

Exclusive jurisdiction for deciding any claims, demands, or causes of action for defects or representations of any nature or damages due from such defects or representations shall be in the courts in the State of Manufacture. The laws applicable to any litigation, dispute, mediation, arbitration or any claim whatsoever arising, from the sale, purchase or use of the recreational vehicle shall be those of the State of Manufacture.

Exhibit A to Suddon Affidavit.

3. Said limited warranty agreement also contains the following clause above the

Plaintiffs' signatures:

I hereby acknowledge that I have read and received a copy of the above warranty for Gulf Stream Coach prior to entering into any contract to purchase my Gulf Stream recreational vehicle and agree to abide by all of its terms and provisions, including, but not limited to, the provisions hereof providing that the exclusive jurisdiction for any claims whatsoever shall be in the courts in the State of Manufacture and that the applicable law shall be the law of the State of Manufacture.

Exhibit A to Suddon Affidavit.

4. Gulf Stream is an Indiana corporation with its principal place of business in Nappanee, Indiana. Affidavit of Anthony Suddon (Exhibit 2).

5. The motor home in question was manufactured in the State of Indiana, by Gulf Stream (Exhibit 2).

6. Pursuant to the clear and unambiguous language of the warranty agreement, the forum selection clause must be enforced and the Plaintiffs' Complaint against Gulf Stream must be dismissed.

7. In the alternative, this matter should be transferred to the United States District Court for the Northern District of Indiana, South Bend Division, pursuant to 28 U.S.C. § 1404(a).

WHEREFORE, pursuant to Rule 12 of the Federal Rules of Civil Procedure and/or 28 U.S.C. § 1404(a), Defendant prays for an Order of this Court dismissing Plaintiffs' Complaint against Gulf Stream without prejudice or, in the alternative, transferring this matter to the United States District Court for the Northern District of Indiana, South Bend Division, awarding Gulf Stream its costs incurred in the defense of this action, and for any other relief the Court deems just and proper.

J. Thomas Caskey, Federal Bar No. 00576
401 Washington Avenue
Suite 204
Towson, Maryland 21204
(410)821-6353
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of March, 2003, a copy of Defendant's Motion to Dismiss or To Transfer was mailed, first class, postage prepaid, to:

Jeffrey N. Pritzker, Esquire
Margolis, Pritzker & Epstein
405 E. Joppa Road
Suite 100
Towson, Maryland 21286
Attorneys for Plaintiffs

J. Thomas Caskey